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Attorney for Defendants

Sandra Gallagher Lewis

And David Vincent Lewis

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MISSION TRADING COMPANY,
INC.,

Plaintiff,

v.

SANDRA GALLAGHER LEWIS,
individually; DAVID VINCENT
LEWIS, individually, DOES 1 – 10,
inclusive,

Defendants.

CASE NO.: 3:16-CV-01110-JST

DECLARATION OF DAVID LEWIS
IN SUPPORT OF MOTION TO SET
ASIDE DEFAULT

Hearing Date: August 4, 2016

Courtroom: 9,

Phillip Burton Building, 19th Floor

450 Golden Gate Avenue

San Francisco, CA 94102

Time: 2:00 p.m.

[Filed Concurrently with:

- Notice of Motion and
Memorandum of Points and
Authorities;
- Declaration of Sandra G. Lewis;
- Declaration of Kira A.
Schlesinger;
- (Proposed) Order.]

*Assigned for All Purposes to the
Honorable Jon S. Tigar*

Schlesinger Conrad Law Firm
3936 E. Desert Cove Avenue, 1st Fl., Phoenix, AZ 85028



DECLARATION OF DAVID LEWIS IN SUPPORT OF MOTION TO SET ASIDE DEFAULT



1 I, David Vincent Lewis, hereby declare:

2 1. I am over age eighteen and Defendant in the above-captioned action.
3 Except as to those averments based upon information and belief, I have personal
4 knowledge of the following facts and would testify competently thereto if called as
5 a witness. As to those statements on sworn on information and belief, I have
6 reviewed documents and made reasonable inquiries and the averments are made
7 in a good faith belief that they are true.

8 2. Professor Foam is owned by me and my wife Sandra.

9 3. The company sells various automotive aftermarket products on
10 Amazon and similar websites under the Professor Foam label.

11 4. Professor Foam does not sell exterior car parts. The products that are
12 at issue in this case are O-Rings and seals that are engine fuel bowl drain
13 components.

14 5. Professor Foam purchases these components in Texas. They are then
15 packaged as kits and sold on Amazon.

16 6. In order to sell on Amazon, sellers simply create an ad. It was then
17 assigned an Amazon Seller Identification Number or "ASIN". That number is
18 assigned by Amazon based upon the relation of the new ad to "parent" products.

19 7. In order to sell on Amazon, each seller must agree to the terms,
20 including arbitration. My review of the terms and conditions indicated that only
21 small claims cases may be heard in court, as opposed to arbitration. The
22 designated court for small claims actions is in King County, Washington.

23 8. The customer does not pay Professor Foam directly; they pay
24 Amazon. Amazon, in turn, takes their share and sends the balance to Professor
25 Foam every two weeks.

26 9. Products purchased through Amazon are shipped domestically, and
27 the buyer receives the package showing the item came from Professor Foam
28 through Amazon.

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1 10. Upon information and belief, based upon my reading of the terms
2 and conditions and my understanding of the process for selling on Amazon, there
3 is no connection through Amazon with California.

4 11. My wife and – when I’m available – I work from our home in Harris
5 County, Texas.

6 12. We do not target or seek out sales in the State of California.

7 13. Although I understand that my wife was personally served on or
8 about March 10, 2016, I was not initially served because, on information and
9 belief, I was traveling at the time that service was attempted. I was traveling from
10 Louisiana for my work with Petroleum Helicopters, Inc., to Florida, where I
11 volunteered at Sun and Fun Air Show on behalf of the Seaplane Pilots Association.
12 I then had to race back to Louisiana to meet with the FAA in connection with
13 becoming a credentialed DPE- Designated Pilot Examiner. From there, returned
14 to Pineville, Florida to train more students.

15 14. Upon information and belief, based upon the dates set forth in the
16 alleged declaration of due diligence filed by Plaintiff (Dkt. 23, 2/3), while I was
17 traveling a process server came to my home in Texas. I am informed and believe
18 that the process server ultimately wedged the documents in the front door.

19 15. While I had no understanding that I had been served, because Sandra
20 was served, we began seeking legal representation. I did not have any contacts in
21 Northern California to get a referral from, and many of the attorneys we cold-
22 called did not called back. We were not able to obtain counsel until approximately
23 June 16, 2016. Thus, we were “*in pro per*” at the time that default was entered.

24 16. I returned to Texas on or about June 17, 2016.

25 17. At that point, I still did not understand that Plaintiff was asserting
26 that I had been served.

27 18. I did not intentionally fail to answer the complaint, and certainly did
28 not intend to manipulate or otherwise impede the justice system.

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19. I simply did not realize that Plaintiff was claiming to have served me, and then I had problems locating counsel. I did not intentionally get myself into this position, and did not realize that not responding to papers thrown on the doorstep would prevent me from being able to defend this case.

20. I have never used any registered trademark belonging to Mission Trading Company, Inc., or any other registered trademark.

21. I did not cause the "H.S" to be affixed to the add I placed for Professor Foam.

22. I never received any call from Plaintiff's counsel or anyone else telling me that an answer was due from me.

23. I respectfully request that this Court set aside the default and allow me an opportunity to respond to the Plaintiff's allegations.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Oklahoma, on June 29, 2016.

David Lewis

Digitally signed by David Lewis
DN: cn=David Lewis, o, ou,
email=davidv.lewis@gmail.com, c=US
Date: 2016.06.29 14:33:46 -05'00'

By David Vincent Lewis

Served on all interested parties via ECF

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